

REMARKS

The Office Action dated January 8, 2010 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 1-11 and 15-23 are pending in this application. The Office Action indicates that claims 12-14 are withdrawn from consideration. However, as noted in the last response, filed October 5, 2009, claims 12-14 were canceled in the Response filed May 4, 2007. No amendments are presented herein.

Rejections under 35 U.S.C. § 102

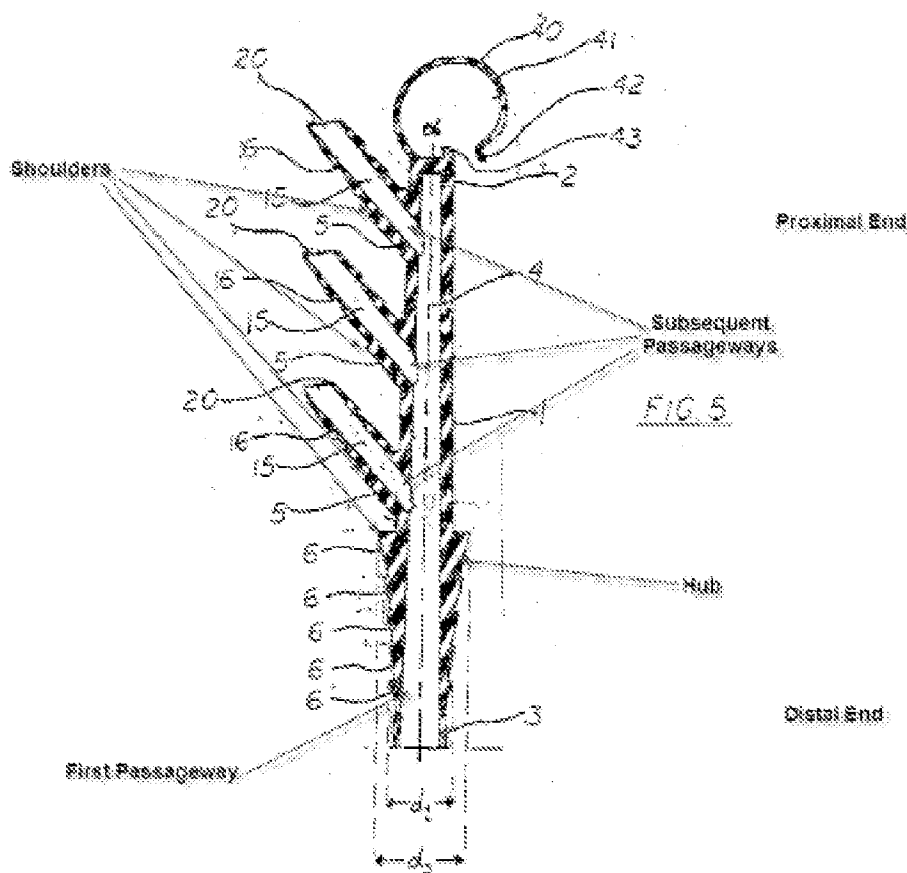
Claims 1-11, and 15-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Pub. 2004/0181209 to Gross (hereinafter, "Gross"). Applicants respectfully traverse this rejection.

Independent claim 1 recites, *inter alia*, "a shoulder on an outer surface of said distal end, positioned proximate said first opening, wherein said shoulder is configured to abut a wall of an outer lumen of a coaxial catheter . . . the first passageway having a first cross-sectional area *from the distal end of the body to the second passageway* and a second cross-sectional area *from the second passageway to the proximal end of the body*, the first cross-sectional area larger than the second cross-sectional area, the second cross-sectional area substantially the same as an outer wall of the inner lumen."

Gross teaches a "multiple port catheter connector [which] can be used in a variety of scenarios within the medical field which require coordination and attachment of a plurality of catheters to conjoin *into a unified efflux or exit flow*." (Gross, ¶ [0044].) Additionally, there is a slight taper in the first passageway as shown in FIG. 5, (Gross, FIG. 5) and as the Office Action admits.¹ (Office Action, p. 3.) A version of FIG. 5, as annotated in the Office Action, p. 6, is reproduced below.

¹ "[T]here is a slight taper in the first passageway leading to a slight continuous decrease in diameter as you traverse from the distal end to the proximal end." (Office Action, p. 3.)

Gross fails to show or describe “a first cross-sectional area *from the distal end of the body to the second passageway* and a second cross-sectional area *from the second passageway to the proximal end of the body*” as expressly recited in claim 1. The Office Action alleges that the first and second cross sectional areas are taught by the “slight taper” (Office Action, p. 3).



A “slight taper,” as shown in Gross, is not “a first cross-sectional area *from the distal end of the body to the second passageway*” because the cross-sectional area of a slightly tapered device *varies* from the distal end of the body to the first subsequent passageway. Accordingly, it is not “a first cross-sectional area” but *many* cross-sectional areas. Similarly, Gross fails to show “a second cross-sectional area *from the second passageway to the proximal end of the body*” because the

passageway continues to taper from the first subsequent passageway to the proximal end of the body. Accordingly, it is not “a second cross-sectional area” but *many* cross-sectional areas.

Additionally, Gross fails to show or describe “a shoulder on an outer surface of the distal end, positioned proximate the first opening, wherein the shoulder is configured to abut a wall of an outer lumen.” The Office Action alleges that one of the barbs 6 or the angled portion of the side ports 5 are “shoulders.” (Office Action, figure, p. 6, reproduced above.)

First, the barbs 6 in Gross are inserted *into* a catheter, they do not “abut” the catheter. Accordingly, the barbs cannot be “a shoulder . . . configured to abut a wall of an outer lumen.” Additionally, the angled portion of the side ports 5 are not “shoulders” as defined in the instant application. As illustrated in FIG. 2 of the instant application, the shoulder 26 is not the angled portion that is located behind the shoulder (moving from distal side to venous side.) Rather, it is the portion located at reference character 26. Further the angled portion of the side ports 5 are not “proximate said first opening” as recited in claim 1.

Accordingly, Gross fails to show or describe each and every element recited in independent claim 1, and thus independent claim 1, and claims 2-7 depending therefrom, are patentable over Gross. Therefore, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 102.

Independent claim 8 recites, *inter alia*, “a coaxial catheter comprising at least two lumens, an inner lumen and an outer lumen . . . a shoulder on an outer surface of said distal end, positioned proximate said first opening, wherein said shoulder is configured to abut a wall of an outer lumen of said coaxial catheter; and . . . the first passageway having a first cross-sectional area from the distal end of the body to the second passageway and a second cross-sectional area from the second passageway to the proximal end of the body, the first cross-sectional area larger than the second cross-sectional area.”

As discussed above, with respect to claim 1, Gross fails to show or describe “a first cross-sectional area *from the distal end of the body to the second passageway* and a second cross-sectional area *from the second passageway to the proximal end of the body*” as expressly stated in claim 8.

Additionally, Gross also fails to show or describe an inner lumen and an outer lumen. The point of Gross is to provide “a unified efflux or exit flow.” (Gross, ¶ [0044].) Accordingly, Gross does not have an inner lumen and an outer lumen. It is not coaxial. Nor would it be obvious to add an inner lumen to Gross to form a device with an inner and an outer lumen because Gross would no longer provide a unified efflux or exit flow. Additionally, Applicants note that the Office Action states “refer to marked-up figure below” but the marked up figure does not indicate which element of the Figure the Examiner believes are the inner or outer lumens.

Accordingly, Gross fails to show or describe each and every element recited in independent claim 8, and thus independent claim 8, and claims 9-11 depending therefrom, are patentable over Gross. Therefore, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 102.

Independent claim 15 recites, *inter alia*, “an insert including a first leg positioned in a proximal opening of the first member; a second generally tubular member positioned coaxially in a lumen of the first member and a first channel of the insert; and a hub disposed over the insert and a proximal end of the first member.

As discussed above, with respect to claim 8, Gross fails to show or describe an inner lumen and an outer lumen. Accordingly, for similar reasons, Gross fails to show or describe a coaxial lumen, as recited in claim 15. The point of Gross is to provide “a unified efflux or exit flow.” (Gross, ¶ [0044].) Accordingly, Gross does not have an inner lumen and an outer lumen. It is not coaxial. Nor would it be obvious to add a coaxial lumen to Gross because it would not be a unified efflux or exit flow.

Additionally, Gross fails to show a hub. The Examiner indicates the “hub” is one of the barbs 6 in the marked up figure. First, as the Office Action admits, the barbs 6 are not at the

proximal end as is expressly recited in claim 15. (Office Action, p. 6, note the Examiner's mark-ups on the figure, specifically, "Distal End.") Second, based on shading in the figure, the barb 6 is the same material as the rest of the multiple port catheter. (See Office Action, p. 6.) Accordingly, the barb 6 cannot be "disposed over the insert" as recited in claim 15 because it is an integral part of the multiple port catheter.

Gross fails to show or describe each and every element recited in independent claim 15, and thus independent claim 15, and claims 16-23 depending therefrom, are patentable over Gross. Therefore, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 102.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

It is noted that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between the cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein should not be construed to prejudice or foreclose future consideration by Applicants of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner and/or the merits of additional or alternative arguments.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-2191, under Docket No. 101672.0012P from which the undersigned is authorized to draw..

Dated: April 8, 2010

Respectfully submitted,

Electronic signature: /Todd W. Wight/

Todd W. Wight

Registration No.: 45,218

RUTAN & TUCKER

611 Anton Blvd, Suite 1400

Costa Mesa, California 92626

(714) 641-5100

Patents@Rutan.com